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DE RUEHCV #0232/01 0532127
ZNR UUUUU ZZH
R 222127Z FEB 08
FM AMEMBASSY CARACAS
TO RUEHC/SECSTATE WASHDC 0650
INFO RUEHBO/AMEMBASSY BOGOTA 7695
RUEHLP/AMEMBASSY LA PAZ FEB LIMA 0959
RUEHQT/AMEMBASSY QUITO 2774
RUCPDO/DEPT OF COMMERCE

UNCLAS CARACAS 000232

SIPDIS

SENSITIVE
SIPDIS

STATE FOR EB/IPE JBOGER
DEPT PLS PASS TO USTR JCHOE-GROVES
DOC PLS PASS TO USPTO CPETERS

E.O. 12958: N/A
TAGS: [KIPR](#) [VE](#)
SUBJECT: 2008 SPECIAL 301 RECOMMENDATION: KEEP VENEZUELA
ON PRIORITY WATCH LIST

REF: A. STATE 9475
[1](#)B. 07 CARACAS 366
[1](#)C. 06 CARACAS 486

[1](#)1. (SBU) Summary: The BRV's protection and enforcement of IPR continues to deteriorate. The market for legitimate music CDs is eclipsed by piracy, with piracy rates for CDs, DVDs, and business software hovering above 80 percent. SAPI, the agency that oversees IPR enforcement and issues patents, has not issued a single patent since 2004. Based on the BRV's antipathy to IPR, weak enforcement, and possible legal changes to further strip away IPR protections, Post recommends that Venezuela remain on the Special 301 Priority Watch List for 2008. End Summary.

The Pharmaceutical Industry

[1](#)2. (SBU) The international pharmaceutical industry continues to see a weakening of IPR protection in Venezuela. Despite Venezuela having the highest per-capita pharmaceutical consumption in Latin America, and being the third largest market in the region, SAPI, the Autonomous Intellectual Property Service (the country's primary IPR authority) has not issued a patent to an imported pharmaceutical product since 2003, and has not issued a patent in any sector since [1](#)2004. According to a local IPR contact, SAPI received 2,958 patent applications in 2007 (over 50 percent of these were from the pharmaceutical industry), of which zero were approved. (Note: SAPI approved 26 designs. End Note.) Since 2002, the BRV has failed to protect pharmaceutical testing and other confidential data for product submissions that have not yet received patent protection. The BRV also does not provide a linkage between patent and sanitary registrations. As a result, counterfeiters can receive sanitary registration approval in the absence of a patent -- equivalent to marketing approval for a counterfeit product. Eduardo Saman, the Director of SAPI and the newly appointed Director of the National Institute for the Defense of the Consumer (INDECU), has argued that trademarks and patents impeding the fabrication of generic medicines or the reproduction of technology should be considered monopolies. Monopolies are prohibited under the Venezuelan constitution.

Recorded Media and Software

[1](#)3. (SBU) The market for legitimate CDs and DVDs continues to decline. According to a Post IPR contact, in 2007 there were approximately 1.9 million music CDs sold in Venezuela and 90 million "virgin" discs imported, ten million more disks than in 2006. This

would indicate that Venezuela is not solely a distribution source, but may be a production center for counterfeit products. Industry experts estimated the piracy rate for music CDs at 88 percent in 2007. The number of street vendors selling pirated DVDs and CDs on the highway during rush hour has also visibly increased over the last year. One local report estimated losses due to pirated CDs at USD 50.6 million. The

14. (U) National Film Law, passed in August 2005, requires distributors to copy in Venezuela a percentage of the movies they plan on distributing locally and to register all films. Industry sources fear that this could lead to unauthorized releases of confidential information and contribute to piracy. They estimate

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that 92 percent of movies purchased in Venezuela were produced illegally, and estimate losses of approximately USD 41.3 million.

15. (SBU) The piracy rate for business software in 2007 was 86 percent, according to the Business Software Alliance. U.S. software companies have repeatedly come under attack from the BRV as exemplars of what President Chavez referred to as the "neo-liberal" trap of IPR. In 2004, the BRV passed legislation that mandated the use of open source software throughout the public sector. While not a violation of IPR in and of itself, the software industry has concerns about a lack of transparency in its implementation and favoritism shown to certain vendors.

Tenuous Legal Protection of IPR in Venezuela

16. (SBU) The legal framework in Venezuela for Intellectual Property Rights has become more ambiguous since the BRV withdrew from the CAN (Andean Community) in April 2006. Venezuelan law had incorporated over 650 legal decisions from the Andean Community into domestic

law, including Decision 486, a pronouncement on protection of intellectual property rights. The most recent domestic intellectual property legislation in Venezuela dates from 1955 and does not provide for patent protection. Venezuelan courts have, de facto, continued to apply Decision 486, though they have offered no assurances that they will continue to do so.

17. (SBU) Numerous Post contacts have said that a new copyright law is expected to be decreed via the "enabling law." In January 2007, the National Assembly delegated to President Chavez, for a period of 18 months, the power to issue decrees carrying the force of law. Both the pharmaceutical and recording industries expressed their concern to us over potential abuse of this power to push through legislation that would further weaken the IPR regime. In particular, there is concern that Chavez may sign into law a controversial copyright bill dating from 2004. The bill would violate many of Venezuela's bilateral and multilateral IPR treaty obligations including the Bern Convention and TRIPs. It would reduce the protection period for copyrights from 60 to 50 years and would allow the BRV to appropriate artistic rights for the public sector. In 2007 the second-Vice President of National Assembly presented a different but similar version of this bill to the Andean Parliament. Venezuela has also not deposited the instruments of ratification for the WIPO Copyright Treaty or the WIPO Performances and Phonograms Treaty, and we are told has not sent an official delegation to WIPO committee meetings since 2004.

Government of Venezuela's Open Hostility to IPR

18. (SBU) In 2007, the BRV attempted to remove significant IPR protections from the Venezuelan constitution as part of President Chavez failed December 2 constitutional reform package. Eduardo Saman, the director of SAPI and INDECU, drafted the proposed changes to article 98 that would have notably deleted any mention of abiding by established IPR law and international treaties and also would have removed the term intellectual property rights from the constitution, referring only to copyrights. This measure was co-sponsored by cooperatives representing distributors of pirated CD and DVDs. Despite the rejection of President Chavez' reform

package, Saman has continued to issue anti-IPR statements and has said that he was trying to decriminalize the pirating of all works.

Other IPR BARRIERS

¶9. (SBU) The BRV's foreign currency controls have been another barrier to IPR in Venezuela. The Currency Exchange Administration (CADIVI) has been blocking access to foreign exchange for companies attempting to pay royalties, patent license fees, and franchise fees. As indicated in a June 2007 CADIVI resolution, 100 foreign currency requests to pay licensing fees from 2005 were allowed to expire due to improper paperwork, something IPR contacts deny. While CADIVI does not deny these currency requests, not acting on them prevents businesses from complying with IPR laws.

IPR Enforcement

¶10. (SBU) IPR enforcement in Venezuela continues to be weak. Enforcement problems derive for the most part from a lack of political will, lengthy legal processes, unprepared judges, and a lack of resources for investigation and prosecution. A single special prosecutor who has one assistant is responsible for IPR issues in Venezuela. Consequently, investigations are severely backlogged. Under current Venezuelan law, IPR enforcement actions can only take place as a result of a complaint by the rights holder. In addition, the complainant is responsible for the cost of storage of allegedly illicit goods during the investigation and trial. Trials can go on for years and storage costs are very high, making it unfeasible that someone will complete the legal process. A loophole in the law only permits actions against copyright violators operating at a fixed location, effectively barring prosecution of street vendors.

¶11. (SBU) SENIAT, the customs and tax enforcement agency, has been the one bright spot for IPR enforcement with noteworthy efforts to fight piracy in conjunction with its "zero tax evasion" and "zero contraband" missions. In February 2007, SENIAT reportedly destroyed

450,000 pirated CDs and 280,000 pirated DVDs. Vielma Mora, the former superintendent of SENIAT, claimed to have invested USD 32.5-37.2 million to fight piracy in 2007. To avoid possible political fallout, SENIAT has sent employees outside Venezuela to receive IPR enforcement training. However, on February 1, Vielma Mora, the BRV's lone IPR advocate, was fired. Two weeks after this announcement, Post's contact at SENIAT declined to speak with us on SENIAT's IPR enforcement plans, saying she had to wait for new guidelines before sharing any information. The Venezuelan copyright and trademark enforcement branch of the police (COMANPI) also attempts to provide copyright enforcement support with a small staff of permanent investigators. Local IPR contacts have said that COMANPI, an agency known for its lack of personnel, limited budget, and inadequate storage facilities for seized goods, no longer has a functioning headquarters.

Comment

¶12. (SBU) Venezuela continues to have an unfriendly environment for protecting intellectual property rights. Pirated and counterfeit products abound, and piracy rates are climbing. Overall enforcement remains weak and high ranking officials publicly express their disdain for IPR protection. The BRV has dedicated few resources to investigating and prosecuting IPR crimes. The legal regime for IPR protection is in a state of uncertainty after Venezuela's withdrawal from the CAN, and IPR protection will likely deteriorate in the upcoming year if Chavez pushes through controversial copyright legislation that would further undermine IPR protection and violate Venezuela's treaty obligations. Post recommends keeping Venezuela on the Special 301 Priority Watch List for 2008.

Duddy